IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2678 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALICHARAN RAGHUNATH - Petitioner(s)
Versus
DISTRICT SUPERINTENDENT OF POLICE & 2 - Respondent(s)

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Appearance :
MRS SANGEETA N PAHWA for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 10/07/2007

ORAL JUDGMENT

1. This petition is directed against the order dated 30.11.94 passed by the District Superintendent of Police, Surat(Rural) imposing punishment of

compulsory retirement upon the petitioner after holding full-fledged inquiry.

2. The facts in brief deserve to be set out for appreciating the rival submissions of the parties.

2.1 The petitioner who was serving as driver in Motor Transport section(hereinafter referred to as 'MT section'), Surat was transferred vide order dated 16.08.85. The order transferring the petitioner from MT section(Driver) to the post of Head Clerk, Surat(Rural) was on account of the allegation that the petitioner on 11.08.85 unauthorisedly and without permission of his superiors took away the police jeep for his personal work and when the police jeep was taken away he dashed with a rickshaw and injured the rickshaw driver. The transfer order does not indicate any such cause for transferring the petitioner from MT section. However, as it is stated hereinabove the aforesaid incident played a part in persuading the authority to transfer the petitioner from the MT section to that of Police Force, Surat(Rural) as Head Clerk.

2.2 The petitioner challenged the said transfer order as he considered it to be reversion by preferring Regular Civil Suit No. 1035/85 in the court of Civil Judge, Senior Division, Surat and obtained injunction against the transfer. The injunction order came to be confirmed by the concerned court vide order dated 24.02.86. The

petitioner was served with a charge-sheet in the month of November, 1986 enlisting the misconduct on his part in respect of the aforesaid incident of taking official vehicle unauthorisedly and dashing the same with a rickshaw injuring the driver and not disclosing the same to the concerned authorities in time.

2.3 It appears that the petitioner challenged the issuance of charge-sheet by preferring Regular Civil Suit No. 51/87 wherein initially injunction was granted. However, subsequently vide order dated 31.03.92, the same came to be vacated meaning thereby the department was given liberty to proceed with the charge-sheet. It deserves to be noted at this stage that the petitioner has not challenged this order dated 31.03.92 passed by the competent court vacating the injunction against the inquiry and charge-sheet in Regular Civil Suit No. 51/87.

2.4 As the injunction came to be vacated, the inquiry proceeded. The petitioner did not remain present in the inquiry and he sought time only when he was served with show-cause notice for imposing punishment of compulsory retirement. The petitioner requested the concerned authority for time so as to enable him to place on record the judgement of acquittal in Criminal Case No. 216/85 that was filed against him for the offence punishable under sections 279 & 337 of Indian Penal Code as well as sections 79, 89 & 116 of Motor Vehicle Act which had arisen

out of the said incident of dashing the official vehicle with the rickshaw when the vehicle was taken unauthorisedly for personal use. The request for longer time for production of this judgement was rejected as it was not found to be relevant by the concerned authority. However, the petitioner was granted sometime for making his submissions on the show cause notice whereby the penalty of compulsory retirement was proposed.

2.5 After a detailed discussion, the District Superintendent of Police, Surat(Rural) passed an order on 30.11.94 imposing penalty of compulsory retirement upon the petitioner. The said order is impugned in the present petition.

3. Ms Sangita Pahwa, learned advocate appearing for the petitioner has submitted that looking to the charge-sheet as well as the order of the civil court, the transfer amounted to be reversion. She has submitted that the authority now states that the transfer order was not a reversion. Even if the petitioner assumes it to be transfer, then the reasons given for such transfer go to show that it was a penal transfer. She has submitted that in any case the principle of double jeopardy shall be applicable in the present case. Ms Pahwa has further submitted that once the authority felt that the petitioner's offence was such as warranting penalty of transfer or reversion, as the case may be, the same authority now for the same offence imposed

penalty of compulsory retirement which goes to show that the authority has not applied its mind in the proper perspective.

3.1 Ms Pahwa has also submitted that the offence was of 11.08.85 as a result of which the petitioner was reverted/transferred. The Civil Judge, Senior Division, Surat came down upon the DSP heavily for not complying with the orders made by the Civil Court, in its order dated 24.02.86. Though in the pleadings aspect of malafide action is not taken up, however, in her oral submissions she has submitted that the entire proceedings appear to have been conducted with malafide intention. She has submitted that the charge-sheet is issued in the month of November, after about 12 months.

3.2 Ms Pahwa has further submitted that there are in all three charges levelled against the petitioner. The first one being using the official vehicle for personal use unauthorisedly and without permission of the superiors. She has submitted that the said charge in itself should not be viewed so seriously as to visit the petitioner with serious punishment of compulsory retirement. The second charge is of not informing the concerned authority about the accident of the official vehicle with a rickshaw. She has submitted that in clause 5 of page 25 the respondent has stated that the petitioner informed about the said accident on 11.08.85. The third charge is to the effect that damages to the tune of Rs. 800/- had

incurred on the vehicle which met with the accident. She has submitted that the damages of Rs. 800/- was not so big as to attract punishment of compulsory retirement.

3.3 Ms Pahwa has also submitted that the offence is of the year 1985 and because of the stay granted by the competent court the petitioner was working till the year 1994. During this period from the date of offence till the date of imposing of penalty, no single complaint has been registered against the petitioner. She has submitted that in view of the aforesaid aspect the authority ought to have taken a lenient view of the matter and ought not to have imposed a punishment so harsh as compulsory retirement.

3.4 Ms Pahwa has submitted that qua the offence which is levelled against the petitioner, a criminal case was also filed whereunder the petitioner has been acquitted and therefore the charge-sheet which was issued after acquittal was in itself bad and the resultant punishment, therefore, ought not to have been imposed.

4. Mr Ketan Dwivedi, learned Assistant Government Pleader appearing for the State has submitted that the order dated 16.08.85 is merely an order of transfer as it is borne out from the affidavit filed by the DSP, Surat(Rural) on 03.04.07. The transfer is therefore wrongly conceived to be reversion and a

plea is sought to be canvassed based there on that the petitioner is doubly jeopardised. Mr Dwivedi has further submitted that the issuance of transfer order dated 16.08.85 cannot in itself be said to be an order of penalty, punishment or reversion as looking to the conduct of the petitioner who had taken away unauthorisely the official vehicle and dashed with a rickshaw. He has submitted that it was in the interest of administration that he was immediately required to be shifted from the said post. Therefore, the issuance of transfer order dated 16.08.85 in itself cannot be said to be an order imposing punishment depriving the department of holding full-fledged inquiry and imposing punishment upon the delinquent-petitioner.

4.1 Mr Dwivedi has submitted that the plea of malafide intention canvassed on behalf of the petitioner at the bar is not borne out by the pleadings on record. He has submitted that the petition therefore deserves to be dismissed as no case is made out.

5. This court has taken into consideration the documents placed on record and heard the learned advocates for the parties. The order impugned in this petition goes to show that the petitioner had been given enough opportunity to attend the inquiry and put forth his defence. The fact remains to be noted that the petitioner has, despite enough opportunity given to him, not availed the opportunity

of putting forward his defence. The inquiry therefore was conducted in absence of the petitioner. However, it deserves to be noted that the concerned authority did afford all the reasonable opportunity to the petitioner for putting forward his version. This observation deserves to be borne in mind while examining the submission in respect of submitting report about the incident by the petitioner as it is canvassed by the learned advocate for the petitioner at bar.

6. The order of transfer dated 16.08.85 as it appears on the face of it cannot be termed to be an order of reversion. The petitioner has not been visited with any other penal consequences because of his transfer effected on 16.08.85. The affidavit filed by the DSP, Surat on 03.04.07 goes to show that the order dated 16.08.85 had infact not been an order of reversion and/or order of penalty. This affidavit and contents thereof have not been assailed or traversed in any manner by the petitioner. Therefore they have to be taken on their face value meaning thereby that the order dated 16.08.85 which was stayed by the competent court cannot be said to be an order imposing any penalty upon the petitioner and thus the submission with regard to double jeopardy would not come to the rescue to the petitioner in any way.

7. The contentions with regard to issuance of charge-sheet and malafide issuance of charge-sheet

deserve to be dealt with together as they are the same plank of one argument. It is submitted on behalf of the petitioner that the concerned authority issued charge-sheet as the Civil Judge, Senior Division came down heavily upon the authorities in its order dated 24.02.82 in Regular Civil Suit No. 1035/85. The submission that as only the transfer was effected vide order dated 16.08.85 the entire misconduct infact did not warrant issuance of charge-sheet is of no substance as it appears form the record. The order dated 16.08.85 was merely a transfer order and by issuance of the said order it cannot be said that the authority had infact given up its contemplation about initiating any departmental proceeding against the petitioner.

7.1 So far as the submission in respect of malafides is concerned, it deserves to be noted that even the Civil Court has not initiated any action against the concerned authorities and the concerned authority has infact carried out the order of the Civil Court and the petitioner was permitted to perform his duty on the post till the order of compulsory retirement was passed meaning thereby the order dated 16.08.85 did not take effect at all. This submission should not detain the court any longer as otherwise also the submission of malafide action is not having any basis in the pleadings as the learned advocate appearing for the petitioner has fairly submitted that as it emerges from the records, the plea of malafide is raised for the first time today during the course of

argument.

8. This brings this Court to the contention with regard to the acquittal in the Criminal Case. It deserves to be noted that a criminal case was filed at the instance of rickshaw driver who was injured due to the dashing with the vehicle of the petitioner which was being used for personal purpose unauthorisedly. The order of acquittal was therefore of no relevance so far as the departmental inquiry was concerned. This submission also will therefore be of no avail to the petitioner.

9. The submission with regard to the petitioner's intimating the concerned authority was sought to be supported by inviting this Court's attention to the list of documents mentioned at page 25 wherein item no.5 was pressed into service which indicates that a report was given on 11.8.85 which in turn was routed to the superior on 13.08.85. Based upon this entry, Ms Pahwa has canvassed submission that the charge-sheet so far as not informing the concerned authority is concerned is bereft of any substance. This Court is unable to agree with the submission of Ms Pahwa as the recording of evidence narrates clearly the conduct of the petitioner. Assuming for the sake of examination of this submission that the report about the incident was given by the petitioner, but then it was open to him to bring this fact to the notice of the concerned authorities during the course of the inquiry as it is referred hereinabove. The

petitioner has not appeared before the inquiry office despite enough opportunity given to him and therefore this submission is also of no avail to the petitioner.

10. The order imposing punishment of compulsory retirement clearly indicates that because of the facts and circumstances and the conduct of the petitioner in taking away the official vehicle for his personal use and dashing the same with a rickshaw and not reporting the entire incident in time has resulted into loss of confidence and the petitioner did not deserve to be retained in police service. The penalty of compulsory retirement therefore commensurates with the misconduct proved against the petitioner and therefore this Court is of the view that the petition does not deserve to be allowed.

12. The punishment of compulsory retirement cannot be said to be disproportionate looking to the gravity of charges. A driver in the police force is nevertheless an employee of uniformed force and therefore any deviation from the said norms of behaviour and expected conduct from a member of police force deserves to be viewed seriously. Therefore, this Court is unable to accept the submission of Ms Pahwa that the penalty of compulsory retirement was disproportionate to the gravity of charges. The order of compulsory retirement therefore deserves to be sustained. The petitioner has not made out any case for any interference under

Article 226 of the Constitution of India. The petition therefore deserves to be dismissed.

13. In the premises aforesaid, this petition is dismissed. Rule is discharged.

(S.R.BRAHMBHATT, J.)

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